

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE  
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona  
February 28, 2007  
9:00 a.m.

Location: 1110 W. Washington  
Room 250  
Phoenix, Arizona

REPORTED BY:  
Deborah J. Worsley Girard  
Certified Reporter  
Certificate No. 50477

WORSLEY REPORTING, INC  
P.O. Box 47666  
Phoenix, AZ 85068-7666  
(602) 258-2310  
Fax: (602) 789-7886

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1 COMMITTEE MEMBERS PRESENT:

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Hal Gill, Chairman

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Karen Gaylord

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Michael O'Hara

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Andrea Martincic (Telephonic appearance.)

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Philip McNeely

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Tamara Huddleston

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Myron Smith

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1        P R O C E E D I N G S

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3        CHAIRMAN GILL: In the interest of time, let's go  
4 ahead and call the Commission meeting, and I want to welcome you  
5 to the February 28, 2007 UST Policy Commission meeting. I was  
6 going to wait a little while because there are accidents all over the  
7 place, but both Andrea and Karen have to leave early so we've got  
8 to try to get through this because we will lose our quorum and we  
9 will have to quit, so we will.

10 My understanding is that No. 2, approval of minutes, we will not  
11 be doing that because we weren't able to get the minutes, so we  
12 will skip No. 2, and moving right along.

13 Updates for the rules affecting the UST program, Mr. McNeely.

14 MR. MC NEELY: Do you want to do a roll call at all?

15 CHAIRMAN GILL: Oh, yeah. Roll call.

16 MR. SMITH: Myron Smith.

17 MS. HUDDLESTON: Tamara Huddleston.

18 MR. MC NEELY: Philip McNeely.

19 CHAIRMAN GILL: Hal Gill.

20 MS. GAYLORD: Karen Gaylord.

21 CHAIRMAN GILL: And Andrea is on the speaker.

1 MS. MARTINCIC: Andrea Martincic.

2 CHAIRMAN GILL: Thank you. All right. Thanks. Thanks, Phil.

3 MR. MC NEELY: You are welcome.

4 Update of rules affecting the UST Program update,  
5 the MNA rules, we had our first stakeholder meeting on the  
6 23rd, which is last Friday, and we had, I think, 13  
7 members of the public show up. Karen Gaylord was there  
8 and the City of Phoenix. It went pretty well. We passed  
9 out some handouts, and I think we e-mailed all of the  
10 stakeholders. We are waiting for comments on the concepts  
11 over the next two weeks, then we're going to put it in  
12 language, rule language form and send that out by the last  
13 week of March, then we will wait for a couple of weeks for  
14 comments and have another stakeholder meeting probably in  
15 the early April time frame.

16 So there wasn't a whole lot of controversy,  
17 really. It seems most people are pretty agreeable to the  
18 rule or the concept anyway, so hopefully we will have a  
19 rule in the summertime for the Policy Commission for their  
20 review, maybe early summer.

21 The SRL or the Soil Remediation Standards Rule,  
22 that is supposed to be scheduled for the Governor's  
23 Regulatory Review Council, GRRC meeting on Tuesday, March  
24 6th. That's this Tuesday at 9 o'clock. The agenda has

1 not come out yet, so I don't know exactly where they're  
2 meeting, but you can check with their website and find  
3 out, or once I find out, I will e-mail you the agenda.

4 That's really all I have for the rules affecting  
5 the UST Program.

6 CHAIRMAN GILL: Phil, what is the time frame, if  
7 it moves -- SRL moves to GRRC, what is the time frame for  
8 implementing?

9 MR. MC NEELY: It's 60 days after they submit it  
10 usually to the Secretary of State, and usually they do it  
11 the same day, so it should be May 5th/May 6th time frame.  
12 And we have that on our website now, what we submitted to  
13 GRRC. GRRC made some changes and we made a responsive  
14 summary to comments. If you want to go on the website,  
15 it's a PDF file, you can review what we said, but the  
16 numbers, the actual numbers stay the same, the Appendix A  
17 and Appendix B.

18 CHAIRMAN GILL: Any questions or comments from  
19 the Commission Members on the MNA and the SRL Rules?

20 Okay. We will move right along to Item No. 4,  
21 ADEQ updates, Mr. McNeely again.

22 MR. MC NEELY: I don't have much to update. We  
23 did hire one person in State Lead, a Hydro III, and I  
24 forgot. What's his name, Joe?

25 MR. DROSENDAHL: Jason Kocer.

1 MR. MC NEELY: Jason Kocer. He used to work at  
2 Brown and Coldwell, so he has some consulting experience.

3 Our State Lead Program is looking pretty good.  
4 We're almost fully staffed right now. We're looking for  
5 one more Hydro III in our State Assurance Fund group.  
6 Besides that, we're looking pretty good in terms of  
7 finding staff.

8 That's all I have for the update.

9 CHAIRMAN GILL: Mr. Drosendahl, Corrective Action  
10 monthly update.

11 MR. DROSENDAHL: Yes. In front of you you have  
12 the Corrective Action Section report on activities. The  
13 number of new releases in January was 6, but we closed 28  
14 sites out, so we're still closing more than we're opening.

15 The number of LUSTs being reported has gone up a  
16 little from about an average of 4 to 6, which is not much  
17 of an increase.

18 The number of documents that are undergoing  
19 review is 34, and for the last year it stays about the  
20 same.

21 And we have the results of the Municipal Tank  
22 Closure Program. As of February 7th we've removed 110  
23 USTs from the ground.

24 One more update. We are in the process of hiring  
25 a new unit manager for the Enforcement Unit. We're hoping

1 we have someone in place shortly.

2 And the Route 66 Initiative is going forward.

3 And that's my update for the section.

4 MR. MC NEELY: And we have radio ads that are  
5 playing right now for the Route 66. We did get in our  
6 grant from the EPA. They allowed us to record a radio ad  
7 and put it out to rural areas. As a result of that, we've  
8 had eight phone calls now. I know a couple of them are  
9 eligible. I'm not sure about the other three, but -- so  
10 we will see how that works.

11 CHAIRMAN GILL: Okay. The Risk Assessment Tier  
12 II modeling update.

13 MR. DROSENDAHL: As reported last month, we are  
14 in the process of refining the model, and currently  
15 Jeanene and our contractor that we have are testing the  
16 changes to make sure that, you know, everything is working  
17 fine, and we hope to have that finalized shortly and back  
18 up on the web.

19 CHAIRMAN GILL: Okay. SAF monthly update, Mr.  
20 McNeely.

21 MR. MC NEELY: If you refer to your tables, you  
22 can see that in January we received 115 applications, we  
23 made 119 interim determinations, so that was close, but we  
24 actually reviewed more than we received.

25 If you go back to the next page, it shows the



1 staging, invoice review, process summary. The summary, we  
2 have 22 applications over 180 days and most of those are  
3 ConocoPhillips. I think we're about to get those done.  
4 And we have 20 over 90 and 235 less than 90, so within a  
5 month we will probably have all of our interim  
6 determinations done, except the ones less than 90 days, so  
7 really our backlog is pretty much caught up.

8       And then if you look at the appeals, we did have  
9 57 informal appeals requested. We made 36 interim  
10 determinations, so we received more than we determined,  
11 which is not good. But then on formal appeals, we had 3  
12 formal appeals in January and we made 14 formal appeal  
13 determinations, so overall we're hanging in there doing  
14 pretty well with getting the backlog done.

15       CHAIRMAN GILL: How many of the informal appeal  
16 determinations are overlapping? In other words, you say  
17 you have 57 informal appeals requested, but there were 36  
18 determinations. Are those 36 part of that 57 or is there,  
19 you know -- in other words, there is an overlap of  
20 previous months?

21       MR. MC NEELY: I would assume -- I don't know  
22 exactly, but I would assume if it is 36 in January, it  
23 probably came from the 44 or 58 in December. It takes us  
24 usually a month or so to have our settlement conferences,  
25 so there is always a rotating window.

1 CHAIRMAN GILL: Yeah. Any comments, questions  
2 from the Commission on the DEQ updates?

3 MR. MC NEELY: Did you not get copies, Hal? When  
4 we send you the e-mail, it's an XL spreadsheet and you  
5 have to go to each different tab.

6 (At this time, Mr. O'Hara joins the Commission  
7 meeting.)

8 CHAIRMAN GILL: For the record, if you want to  
9 announce yourself.

10 MR. O'HARA: Mike O'Hara present.

11 CHAIRMAN GILL: Okay. No comments or questions  
12 for Mr. Drosendahl or Mr. McNeely for the DEQ updates?

13 We will move on to the Financial Subcommittee  
14 update.

15 Andrea, are you still there?

16 MS. MARTINCIC: Yes, I am.

17 We met early this month on the 1st, and we had  
18 one --

19 CHAIRMAN GILL: Hold it, Andrea, just a second.  
20 We will try to turn it up. She can't hear you. I'm  
21 sorry, Andrea. Go ahead.

22 MS. MARTINCIC: Okay. So we met this month and  
23 we were trying to find out if there was some kind of  
24 language or amendment possibly that the Financial  
25 Subcommittee would want to recommend to the Commission

1 related to the DEQ legislation, and in particular trying  
2 to find some kind of compromise in terms of the number of  
3 applications that can be submitted in a month, and after  
4 the meeting there really -- it was kind of left that if  
5 Leon had any language, he would get it to me. I didn't  
6 get any suggested language, so I don't have a  
7 recommendation for the Commission on that issue.

8 CHAIRMAN GILL: Okay. And this was specifically  
9 the language for what again?

10 MS. MARTINCIC: For the section of the bill that  
11 deals with, you can't submit more than one application in  
12 a month per site for the Senate Bill 1310.

13 My understanding was in January that the  
14 Commission -- the only exception of that bill that the  
15 Commission was interested in was specifically that  
16 limitation, so we held the Financial Subcommittee to try  
17 to find out if there was some kind of language or  
18 amendment, but we didn't come up with anything at the  
19 Financial Subcommittee meeting.

20 CHAIRMAN GILL: Okay.

21 MS. MARTINCIC: Not much of a report, but that's  
22 kind of where it's at.

23 CHAIRMAN GILL: All right. I note that Leon  
24 Vannais is in the room.

25 Leon, was there any language ultimately that you

1 were able to come up with?

2 MR. VANNAIS: Leon Vannais, Tierra Dynamic.

3 I proposed some ultimate ideas, 12 applications a  
4 year, raising the limit to \$20,000 from \$5,000 rather than  
5 limiting the number of applications submitted in a month.  
6 They just -- I didn't receive any positive feedback  
7 talking with DEQ management, and I just really didn't see  
8 forcing an issue to the Policy Commission, that my feeling  
9 was that the department had very little incentive to --

10 MS. MARTINCIC: Hello, I couldn't hear anything.

11 CHAIRMAN GILL: Leon's talking, but you can't  
12 hear him.

13 MR. VANNAIS: -- very little incentive to  
14 negotiate any kind of compromise on that, other than  
15 bouncing those ideas off people, so --

16 CHAIRMAN GILL: All right. Well, Andrea, just as  
17 you said, it looks like there is no new language to move  
18 forward.

19 MS. MARTINCIC: No, I didn't have a  
20 recommendation for the Commission at all, so unless, you  
21 know, I hear from someone in the UST community that they  
22 want to do something, the bill is over in the house, is my  
23 understanding, so it doesn't look like there is going to  
24 be any kind of recommendation for the Commission on this  
25 legislation.

1 CHAIRMAN GILL: Okay.

2 MS. MARTINCIC: Then I didn't know if I needed to  
3 do anything with the rules or not with the Financial  
4 Subcommittee meeting. I guess we can wait and see if  
5 there are interested parties wanting to further discuss  
6 the MNA Rule.

7 CHAIRMAN GILL: Okay. There was nothing at this  
8 point -- there has been nothing raised as far as the MNA  
9 Rules?

10 MS. MARTINCIC: Right.

11 CHAIRMAN GILL: Okay.

12 MS. MARTINCIC: That's my report.

13 CHAIRMAN GILL: Thanks, Andrea.

14 Any comments or questions to Andrea before the --

15 MR. MC NEELY: The Senate Bill 1310 is in the  
16 House and it went through the Senate and it wasn't  
17 scheduled for today's Environmental Committee. We'll find  
18 out Thursday or Friday if it is scheduled for next  
19 Wednesday in the House Environmental Committee, but we  
20 don't know yet. So eventually the first step would be it  
21 would go to the House Environmental Committee, who meets  
22 Wednesday at 1 o'clock, either next Wednesday or the  
23 Wednesday after that.

24 CHAIRMAN GILL: All right.

25 No further comments? Thank you, Andrea.

1 MS. MARTINCIC: Thanks, Hal.

2 CHAIRMAN GILL: We will move on to the Technical  
3 Subcommittee. We met two weeks ago this month, and  
4 basically we were discussing, as the agenda says, we were  
5 looking at -- the issues, we had had some concerns with  
6 individuals turning in risk assessment screens, Tier II  
7 risk screens, and they're being denied the cost for doing  
8 them.

9 And then in subsequent meetings, we come to find  
10 out that basically we were -- the people that were doing  
11 the risk screens were basically moving along doing a  
12 different type of screen than what the DEQ was doing. And  
13 so we discussed the -- what DEQ considers a risk  
14 assessment screen, which basically entails taking on  
15 sites, taking the most conservative benzene concentration,  
16 which is primarily the driver in risk assessments, and  
17 putting that in the model, just that one high  
18 concentration in the model, and then the model assumes  
19 that's your concentration across the site for the volume  
20 of the plume.

21 And that would be the most conservative numbers  
22 that you could put in there, so, therefore, if your screen  
23 or if your site passes with those conservative numbers,  
24 then you would be -- you would have no risk versus what  
25 some of other consultants were doing was putting in

1 basically all the data which your model averages it.

2       The only concern was, and I agree that that is --  
3 that if it does pass the most conservative risk screen,  
4 then obviously there is no risk, assuming that everything  
5 else was done appropriately in the model.

6       The downside is, if your model fails, you  
7 basically have to do it all over again because that  
8 failure does not necessarily mean that your site did fail  
9 because you only put in one concentration. If you were to  
10 put them all in and averaged it, it very well could have  
11 passed, so you have to do it over again.

12       Our concern was, if we have to do that, how do we  
13 submit that to DEQ SAF showing it failed the first time,  
14 now we're having to do this again, so obviously the  
15 concern was getting reimbursement if you had to repeat the  
16 process.

17       And so what I think, as we left it, the DEQ, we  
18 were ultimately going to -- DEQ was going to come up with  
19 some language as to what the most conservative risk screen  
20 would entail. We will post that on the bulletin board, so  
21 -- and then myself and the DEQ would notify all of the  
22 consultants and owner/operators that if you look on the  
23 risk screen, bulletin boards, you will find what we're  
24 considering the activities are, in other words, what you  
25 need to do, a most conservative risk screen. Then we're

1 basically doing apples to apples when we're turning stuff  
2 into the State Assurance Fund.

3 I would suggest that DEQ also would put in some  
4 kind of language stating if it does fail and you have to  
5 go further, how we would best document that to SAF as far  
6 as letting them know what happened. We decided to move  
7 forward. That's why you are seeing two different costs  
8 for a risk screen and a more complete Tier II risk screen.

9 So that is really the issue and that was  
10 primarily what we came up with is that DEQ would proceed,  
11 put out some language letting everyone know what you are  
12 assuming you would do for a conservative risk screen and  
13 we will get that on the bulletin board.

14 And the next one was the requirement of a site  
15 assessment of certain kinds of site contamination. What  
16 this dealt with was there are many sites out there that  
17 are sitting there for months to years, and for whatever  
18 reason, whether it's -- for whatever reason why they have  
19 not moved forward on these sites. Some of them are rather  
20 old and DEQ would -- we clarified that it was not a ADEQ  
21 policy, new policy, that when they received work plans or  
22 something from the owner/operators on these sites, that  
23 they were requiring in every case you go out and do more  
24 groundwater sampling or borings, or something like that,  
25 but the key point was on a very old site, when DEQ gets



1 the -- whether it's a work plan or a Corrective Action  
2 Plan, they want to see the most current data, and so where  
3 it affects -- where the effect would be, would be the most  
4 concern is for individuals that are not doing work plans  
5 but are just moving forward with their remediation, or  
6 something like that, there is a possibility that they  
7 could go through the entire project, and when they're  
8 submitting it for reimbursement, say you never contacted  
9 us to find out whether or not it needed to be done, we  
10 need to see some more current borings.

11       So, once again, I think we agreed to put  
12 something on the bulletin board just letting them know  
13 that, you know, give DEQ a call if it's an older site or  
14 any site, for that matter. If you are concerned about old  
15 data and whether you should move forward, contact DEQ, set  
16 up at a minimum a telephone call and, if need be, a  
17 meeting to discuss whether or not you need to collect new  
18 groundwater and/or soil data before moving into a  
19 remediation.

20       So, basically, the outcome was that we were going  
21 to put a number of things on the bulletin board and then  
22 get the word out to owner/operators and their consultants  
23 as quickly as possible.

24       Any questions, concerns?

25       So, it was a good meeting, had a really good

1 turnout and some new people showed up, so it was  
2 refreshing to see some more interest in it.

3       Okay. If no comments, we will move on to No. 7,  
4 status of Policy Commission member appointments. Mr.  
5 McNeely?

6       MR. MC NEELY: We've sent a couple of e-mails out  
7 soliciting resumes and we are getting some new resumes.  
8 We're still looking for some more, though. An e-mail  
9 resulted in quite a few contractors wanting to be on the  
10 Policy Commission, which there is really not a seat for a  
11 contractor, but we're almost there. I think we got a  
12 couple of more resumes. We will submit the whole package  
13 to the Governor's Office and let her choose, hopefully in  
14 the next couple of weeks, but we are getting close.

15       CHAIRMAN GILL: Well, as you know, this could  
16 very well be my last time here. I sent in my resignation  
17 last month to the Commission and to Gail, but I did say  
18 that I would stay on until one was -- an individual was  
19 appointed. And so -- and I understand there is at least  
20 someone looking at that position, and so it may not be too  
21 much longer.

22       But anyway -- okay, again, the people in the  
23 Commission and/or if you know anyone that you think would  
24 be a good person for the position that you are holding, if  
25 you are interested in stepping down, please let them know

1 so we can send them in.

2       Summary of meeting action items. I guess the  
3 only action items that I can think of was just the DEQ  
4 language to be submitted on the bulletin board for the  
5 risk screen, conservative risk screen and guidance as to  
6 what kind of documentation would be best to send to SAF to  
7 show what process you are moving through as far as having  
8 to -- moving beyond the conservative risk screen if that  
9 particular one were to fail. Because, as I said, the key  
10 thing we're trying to do is to make sure that the  
11 owner/operators or consultants understand what they're  
12 supposed to do, and that we also understand what kind of  
13 documentation would be appropriate to move it through the  
14 process, which has always been our goal, and then maybe  
15 some language just letting the owner/operators and  
16 consultants know to contact DEQ if they have any sites,  
17 older sites, particularly, or any sites where they have  
18 concerns that their groundwater and soil data may be old  
19 before moving forward with remediation.

20       Those are the only action items that I could --  
21 that I saw.

22       And general call to the public? Don't everybody  
23 jump at once. Okay.

24       I guess the agenda items for next meeting, is  
25 there any discussion?

1 Yes, Myron?

2 MR. SMITH: I would like to bring up the point to  
3 see if we could go to bimonthly meetings for the  
4 Commission with reserving the right to hold a monthly  
5 meeting, if needed, if the need arises.

6 I would also propose moving the March meeting to  
7 April.

8 CHAIRMAN GILL: Discuss bimonthly meetings again,  
9 and move March to April.

10 Any discussion?

11 MR. O'HARA: I agree we should have it on the  
12 agenda.

13 MR. MC NEELY: It's discussion of agenda items as  
14 scheduled.

15 MR. O'HARA: I think you can put it on the agenda  
16 schedule for next Commission meeting.

17 MR. MC NEELY: Any action item, we can vote on  
18 it.

19 MR. SMITH: We can move for the March meeting.

20 CHAIRMAN GILL: Is there -- are there any things  
21 in the rules as far as -- any rules, upcoming rules that  
22 we would have to -- we would need a March meeting? In  
23 other words, that is my only concern with moving it right  
24 now with all the things going through the legislature.

25 MR. MC NEELY: I think in terms of the MNA Rules,

1 we probably won't have a meeting before March 28th. It  
2 probably will be early April, so that would be all right.

3 CHAIRMAN GILL: So there wouldn't be any  
4 discussion?

5 MR. SMITH: If something comes up, I think we can  
6 hold a March meeting. All right?

7 CHAIRMAN GILL: Fair enough.

8 Karen?

9 MS. GAYLORD: So, are you suggesting an agenda  
10 item for the next meeting or are you going to move for  
11 moving the next meeting?

12 MR. SMITH: I don't know if we can actually vote  
13 on bimonthly meetings now or not, but, you know --

14 MS. HUDDLESTON: You can schedule the next  
15 meeting. You can vote on March.

16 MR. SMITH: I think we can move the March meeting  
17 to April, but I think on the April agenda, we need to put  
18 on the agenda to vote on bimonthly meetings as a permanent  
19 item but reserving the right to meet monthly if the need  
20 arises.

21 CHAIRMAN GILL: We will do that. I will let Gail  
22 know to put that on the agenda for the next meeting.

23 MS. GAYLORD: Can I second the motion?

24 MR. SMITH: I move that we move the March meeting  
25 to April.

1 CHAIRMAN GILL: There's been a motion to move the  
2 March meeting to April. It's been seconded.

3 All in favor?

4 (Chorus of ayes.)

5 CHAIRMAN GILL: All opposed?

6 So the next meeting will be the fourth Wednesday  
7 in April, whatever that happens to be, and I will put on  
8 -- I will have Gail put it on the agenda for the next  
9 meeting, discussion of changing the meetings to bimonthly  
10 meetings with the option of holding monthly if something  
11 like rules are, you know -- if we need to meet to be able  
12 to make any decision or whatever.

13 MR. MC NEELY: And I think the subcommittees can  
14 always meet, too, to talk about the rules. Usually the  
15 subcommittees meet first before you have a meeting.

16 CHAIRMAN GILL: The only issue with subcommittee  
17 is that -- what I typically do is bring -- say, okay,  
18 okay, we would like to schedule the subcommittee meetings.  
19 So that's the only time where it could end up delaying  
20 things, but I guess we could figure out a way to do that  
21 if need be.

22 So, okay, any other discussions on agenda items?

23 Announcements. The next Policy Commission  
24 meeting is now the 4th Wednesday in April at 9 a.m. I  
25 guess we need to check -- is that -- because the next

1 meeting was supposed to be in the Carnegie Library, so  
2 that's out. If there is any change on where it is, so we  
3 will be here?

4 MS. MILLER: Yes.

5 CHAIRMAN GILL: The April meeting will be in room  
6 250.

7 MS. MILLER: The date will be April 25th.

8 CHAIRMAN GILL: The next meeting is April 25th in  
9 Room 250, DEQ.

10 Any other discussion? All right. I call the  
11 meeting adjourned.

12 (9:33 a.m.)

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